

1 DANIEL G. BOGDEN
2 United States Attorney
3 ELIZABETH O. WHITE
4 Appellate Chief and
5 Assistant United States Attorney
6 100 West Liberty, Suite 600
7 Reno, Nevada
8 775-784-5438
9

10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 **-oOo-**

13
14 UNITED STATES OF AMERICA,)
15) 2:07-cr-145-KJD-PAL
16 Plaintiff,)
17) Government's Unopposed Motion
18 vs.) to Stay and Hold In Abeyance
19) Proceedings Regarding Defendant's
20 MICHAEL WAYNE YOST,) Eligibility for a Sentence Reduction
21) Until His Direct Appeal Is Final
22 Defendant.)
23 _____)
24

25 The United States of America, by United States Attorney Daniel G. Bogden
26 and Appellate Chief and Assistant United States Attorney Elizabeth O. White, files
27 this motion to stay and hold in abeyance this Court's order (Doc. #1477) regarding
28 Defendant's potential eligibility for a sentence reduction until Defendant's direct
29 appeal is final and jurisdiction is returned to this Court. In support of this
30 unopposed motion, undersigned counsel states as follows:

31 1. On March 17, 2010, this Court sentenced Defendant to 168 months'
32 imprisonment upon his conviction for a drug conspiracy in violation of 21 U.S.C.
33 § 846. CR 1279.

1 2. Defendant filed a timely notice of appeal, CR 1280, which the court of appeals
2 docketed as C.A. No. 10-10125. *See* CR 1286. After lengthy delays, that appeal is now
3 fully briefed, and oral argument has been scheduled for October 19, 2015. *See* C.A.
4 No. 10-10125 (8/11/15 Notice of Oral Argument).

5 3. On June 8, 2015, pursuant to the protocol this Court established for
6 evaluating defendants' eligibility for sentence reductions under 18 U.S.C.
7 § 3582(c)(2) in light of retroactive Guideline Amendment 782, the Federal Public
8 Defender filed a motion for appointment of counsel to represent Defendant to
9 determine whether he qualified for such a reduction. CR 1476. On July 8, 2015, this
10 Court entered an order 1) appointing the Federal Public Defender to represent
11 Defendant, 2) ordering the probation office to obtain and provide to the parties
12 information necessary to determine whether Defendant qualified for a reduction,
13 and 3) setting a briefing schedule. CR 1477.

14 4. Because Defendant's appeal is pending before the court of appeals, this Court
15 is without jurisdiction to address his eligibility for a sentence reduction pursuant to
16 18 U.S.C. § 3582(c)(2) and U.S.S.G. Amendment 782. *See Griggs v. Provident*
17 *Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam) ("The filing of a notice of
18 appeal is an event of jurisdictional significance—it confers jurisdiction on the court
19 of appeals and divests the district court of its control over those aspects of the case
20 involved in the appeal.").

1 5. Undersigned counsel contacted Assistant Federal Public Defender Nisha
2 Brooks-Whittington. Ms. Brooks-Whittington said she has no opposition to the
3 government's motion or to an order staying and holding in abeyance the proceedings
4 regarding the Defendant's potential eligibility for a sentence reduction until his
5 direct appeal is final.

6 For the reasons stated above, the government respectfully requests that the
7 Court grant this unopposed motion, and stay and hold in abeyance proceedings
8 regarding Defendant's potential eligibility for a sentence reduction until his direct
9 appeal is final and jurisdiction has been returned to this Court.

10

11 Dated this 17th of August, 2015.

12 Respectfully submitted,

13
14
15 DANIEL G. BOGDEN
16 United States Attorney
17
18

19 *s/ Elizabeth O. White*
20 Elizabeth O. White
21 Appellate Chief and
22 Assistant United States Attorney
23

IT IS SO ORDERED.



U.S. District Judge

Dated: 8/28/2015